

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MANUEL ARIAS PEREZ,

Defendant-Appellee.

UNPUBLISHED

September 30, 2003

No. 247006

Wayne Circuit Court

LC No. 02-14759

Before: O’Connell, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

The prosecution appeals, by leave granted, from the trial court’s order granting defendant’s motion to suppress. We reverse.

Defendant was initially charged with six counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a), involving a girl under the age of thirteen. A police officer that spoke Spanish reviewed defendant’s constitutional rights, using a constitutional rights certificate of notification form written in Spanish, although the title on the document was written in English. Defendant indicated that he had secondary education in Mexico, which the officer believed was the equivalent of high school, and said that he could read Spanish. Defendant read each of his rights aloud in Spanish. If he understood his rights, he was asked to put his initials on the line next to each right. Defendant said that he understood each right and placed his initials after each right. Defendant gave a statement in which he admitted digital and penile penetration, but denied oral penetration. He also denied molesting the victim with fruit. Although defendant admitted that he was an illegal alien, he refused to provide information regarding his time in the United States and any family. Defendant explained to police that he was embarrassed enough and did not want his family involved.

At the *Walker*¹ hearing, defendant testified that Spanish was his second language. His first language was an Indian language from the east Indian region “from Chappa.”² Defendant

¹ *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

² At the preliminary examination, the victim indicated that defendant spoke English. However, the victim was not called to testify at the *Walker* hearing.

told police that he did not understand Spanish³ because he was an Indian. He spoke the Indian language until the age of twenty and learned Spanish when he began to work. Defendant was thirty-eight years old at the time he spoke to police. Defendant testified that he was hit in the face and threatened by police officers. Because he was afraid of being killed, defendant wrote down the information told to him by police officers. Defendant testified that he wanted to call his family, but the officers wanted a statement from him. Defendant could not explain why police officers would request that he admit to some of the sexual assault allegations, but deny other allegations. Defendant insisted that he responded to the questions as instructed by the officers. The trial court inquired whether defendant understood the role of the judge, prosecutor, defense attorney, and the court reporter in the proceedings. Defendant could explain some of their roles, but not all. The trial court did not reach a conclusion regarding defendant's primary language or the level of his understanding of the Spanish language. Rather, the trial court indicated that it was troubled by the fact that the caption of the notification of rights form was in English, although the remainder of the form was in Spanish. The trial court further indicated that it was "not comfortable" with the fact that the interpretation was conducted by a police officer as opposed to a neutral party. The trial court suppressed defendant's statement, concluding that it was not a knowingly, free waiver of his *Miranda*⁴ rights. The prosecution filed a delayed application for leave to appeal that was granted.

The prosecutor alleges that, under the totality of the circumstances, a knowing waiver occurred. We agree. When reviewing a trial court's determination of the voluntariness of a confession, an appellate court engages in de novo review of the entire record. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). While a trial court's factual findings are reviewed under the clearly erroneous standard, *id.*, an appellate court is required to examine the entire record and make an independent determination of the issue as a question of law. *People v Wells*, 238 Mich App 383, 386; 605 NW2d 374 (1999).

In *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), the Michigan Supreme Court set forth the following list of factors that a trial court should consider in determining whether a statement is voluntary:

[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

³ Despite this assertion, the translator provided for defendant at the *Walker* hearing was Spanish. There is no indication that defendant requested an Indian translator.

⁴ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness. The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made. [Citations omitted.]

Here, defendant was thirty-eight years old at the time he made his statement, he attended secondary school in Mexico up until sixth grade, and he was able to read and write in Spanish. Defendant had not been arrested before this incident. The police questioned defendant for about an hour, and defendant was in custody for less than fifteen hours before questioning began. He was not injured, intoxicated, under the influence of drugs, or in ill health when he made his statement. Defendant did not ask for any food, and he was not deprived of sleep or medical attention; defendant was wearing leg irons, but was not handcuffed. There was no evidence to suggest that there was an unnecessary delay in bringing defendant before a magistrate before he gave the confession. The trial judge found that the officers had not hit defendant.

To determine whether a suspect's waiver was knowing and intelligent, inquiry into the suspect's level of understanding must occur, irrespective of police behavior. *Daoud, supra*. Where the defendant had a low IQ and could not read, the Michigan Supreme Court stated that "the critical inquiry ... is the degree of understanding the accused must possess in order to provide a knowing and intelligent waiver of the rights *Miranda* affords. To knowingly waive *Miranda* rights, a suspect need not understand the ramifications and consequences of choosing to waive or exercise the rights that the police have properly explained to him." *People v Cheatham*, 453 Mich 1, 28; 551 NW2d 355 (1996). In *Daoud, supra*, the Michigan Supreme Court stated that "[t]he Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of [*Miranda* rights]." "Intelligent waiver" means that "the accused understood that he did not have to speak, that he had the right to the presence of counsel, and that the state could use what he said in a later trial against him." *Cheatham, supra*. "[A] very basic understanding is all that is necessary for a valid waiver." *Daoud, supra*. The *Cheatham* Court concluded that the defendant's waiver was valid when the police had administered the *Miranda* warnings and "sought to insure that he understood each warning by inquiring after each warning whether he understood what the warning meant, and obtained an express written waiver before questioning him." *Cheatham, supra*. In *Cheatham*, the defendant had provided appropriate answers to the officer's questions, and there was no indication that the defendant lacked comprehension of what was said to him. *Cheatham, supra*.

In *People v Truong (After Remand)*, 218 Mich App 325; 553 NW2d 692 (1996), the defendant was a Vietnamese immigrant who alleged that he did not knowingly, intelligently, and voluntarily waive his *Miranda* rights because a lack of basic language skills made it impossible for him to understand the translation. *Id.* at 329-330, 333-334. The defendant "told the police that he understood the rights, signed and initialed the waiver form, did not request any clarification, and responded in a logical manner to the subsequent questioning by the police." *Id.* at 335. The *Truong* Court "emphasize[d] that a person speaking to the police through a translator is subject to the same standards as a person fluent in English. There is no greater obligation on the part of the police to ascertain comprehension of *Miranda* rights with respect to a person using a translator than with respect to a person fluent in English." *Id.*

A waiver is intelligently made when the *Miranda* warnings are explained to the defendant by an interpreter familiar with and competent in the defendant's primary language. *People v*

Brannon, 194 Mich App 121, 131; 486 NW2d 83 (1992). The defendant in *Brannon* was hearing-impaired, and the Court looked at the intelligent and knowing prongs of the waiver test. “In light of defendant’s hearing difficulties, the police took special care to see that he understood his rights by use of a written form explaining the rights he was waiving.” *Id.* “[D]efendant did not appear to have a problem understanding the officers, although some statements had to be repeated, and defendant gave appropriate responses to all questions he was asked.” *Id.* at 129. The Court found that the defendant had voluntarily waived his rights and that the waiver was intelligently and knowingly made. *Id.* at 131-132. The *Brannon* Court stated that “[a] waiver is intelligently made when the *Miranda* warnings are explained to the defendant by an interpreter familiar with and competent in the defendant’s primary language.” *Id.* at 131. The use of the word “primary” in *Brannon* was not meant to create an additional requirement that the police provide the *Miranda* warnings in a suspect’s native tongue when it has been demonstrated that defendant is capable of communicating effectively in his second language. Although the trial court stated that “[i]t seems like to me [the interpreter] ought to be somebody that’s neutral, that the police officer should not be the one that’s serving as an interpreter,” neither *Truong* nor *Brannon* requires that an interpreter be neutral, and we will not impose such an additional requirement. See *Truong, supra*; *Brannon, supra*.

Defendant answered all of the officer’s questions appropriately and did not give the officer any reason to know that defendant had not comprehended his *Miranda* rights; this likens defendant to the defendants in *Cheatham*, *Truong*, and *Brannon*. See *Cheatham, supra*; *Truong, supra*; *Brannon, supra*. Defendant’s situation is similar to that of the defendants in both *Cheatham* and *Truong* in another respect; defendant told Officer Parra that he understood his rights, which he admitted on cross-examination. See *Cheatham, supra*; *Truong, supra*. Defendant stated that he knew he was “going to burn himself,” and that he was “pleading guilty” by making a statement. Defendant provided basic background information and personal facts, and he appropriately answered the questions that the officer wrote out in Spanish and English. Defendant also denied two of the allegations, which undermines his allegation that the officer instructed him how to answer the questions. Accordingly, the trial court erred⁵ in granting defendant’s motion to suppress.

Reversed.

/s/ Peter D. O’Connell
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood

⁵ Defendant contends that the trial court’s decision must be affirmed because the trial court’s factual findings are reviewed under the clearly erroneous standard, and clear error did not occur. Review of the findings of fact and conclusions of law reveals that the predominant conclusion of the ruling was based on a misconception of law. The trial court erroneously concluded that the title of the notice of rights page should have been in Spanish and the interpreter should have been neutral.